

Mr. Van Schaik



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** JSA Healthcare Corporation

**File:** B-242313; B-242313.2

**Date:** April 19, 1991

Dale W. Church, Esq., Pillsbury, Madison & Sutro, for the protester.

J. Stuart Lemle, Esq., Land, Lemle & Arnold, for Healthcare Enterprise International, Inc., an interested party.

Gary M. Winter, Esq., Agency for International Development, for the agency.

John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. In reviewing an agency's source selection decision, General Accounting Office will look to the entire record, including statements and arguments made in response to a protest, to determine whether the selection is supportable. That review is not limited to the question of whether the selection decision was properly supported at the time it was made.

2. Agency was not required to discuss with protester the concern that protester's best and final offer (BAFO) did not include sufficient costs for subcontracts because agency did not know level of subcontractor costs proposed until it received BAFOs and an agency is not required to reopen discussions to allow an offeror a further opportunity to revise its proposal when a deficiency first becomes apparent in its BAFO.

3. Award to offeror having higher cost, technically superior proposal is appropriate under request for proposals which gave greater weight to technical merit compared to cost.

### DECISION

JSA Healthcare Corporation, a joint venturer in the American Consortium for International Health Development, protests the award of a contract to Healthcare Enterprise International, Inc. under request for proposals (RFP) No. OS-ANE-90-004, issued by the Agency for International Development (AID) for

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services to organize, design, develop, and implement health sector resource management and generation activities for AID's Bureau for Asia, the near East and Europe.

We deny the protest.

According to the solicitation, the objective of this procurement is the formation of a consortium to engage the expertise and skills of the United States to permit the transfer of United States health finance and operations technology to cooperating countries in Asia, the near East and Europe in order to expand and improve the levels of financial and management resources for healthcare in those countries. The solicitation stated that the successful offeror was expected to be a trade or professional association representing a broad segment of the United States health finance and operations marketplace or a joint venture or consortium of such associations together with: (a) one or more graduate level institutes that train health finance and operations executives, (b) private corporations with investments in healthcare finance and operations, and (c) organizations with experience in organizing and managing international health technical assistance. Under this cost-plus-fixed-fee type contract, AID foreign missions are to identify and request specific technical services. Although the primary source of funds for the contract is to be AID's technical office, AID bureaus and overseas missions are also to provide funds for "buy-ins," which are specific activities within the scope of the contract.

The solicitation stated that award would be made to the offeror whose overall proposal promised the greatest value to the government. The solicitation included the following technical criteria and subcriteria and relative weights (listed here in an abbreviated version):

a. Institutional Capabilities - 200 points

1. Consortium Makeup
2. Institutional Leadership
3. Experience

b. Creativity and Technical Merit - 175 points

1. Demonstrated knowledge and understanding of the range of options for meshing private and public interests in the health sector to enhance efficiency, productivity and equity in meeting needs of the poor and most vulnerable.
2. Demonstrated knowledge of the best and most creative approaches to healthcare finance and

operations in U.S. public policy settings and within the U.S. delivery system.

3. Proven institutional legitimacy to tap into and access U.S. health finance and operations expertise.

4. Ability to provide to AID a collective voice and point of contact with U.S. health industry.

5. Management plan.

c. General Responsiveness - 100 points

1. Linkages to range of U.S. healthcare industry firms and organizations.

2. Demonstrated flexibility to adjust to changing demands and circumstances.

3. Experience in information dissemination, training, conference management and organization.

d. Quality of Proposed Personnel - 150 points

1. Core Professional Staff - 100 points

Technical Director

Deputy Director/Administrative Coordinator

Skills Development Coordinator

Senior Administrative Assistant

2. Consultants by technical area - 50 points

Total: Technical - 625 Points

With respect to the cost evaluation, the RFP explained that offerors were not expected to know the exact distribution of technical assistance activities under the contract, particularly for consultant services funded by "buy-ins." Therefore, according to the solicitation, cost proposals were to be "evaluated on costs which are capable of being estimated at this time, i.e., on the core costs." The solicitation also stated that an important element of the cost evaluation was to be "the relationship of the level of overhead or indirect costs to direct program costs" and "[a]lthough cost factors have not been given a numerical weight, the weight is not to be considered as high as 50%."

Four firms submitted proposals. AID evaluated and scored the technical proposals, resulting in an initial technical score

of 456 for American Consortium and 504 for Healthcare Enterprise, out of a possible 625 points. Healthcare Enterprise's proposal was rated the highest. AID held discussions with all four offerors and requested and received best and final offers (BAFO). Based on the BAFO technical evaluation, American Consortium's score was decreased to 446 and Healthcare Enterprise's score was increased to 518. As a result, the technical evaluators recommended award to Healthcare Enterprise.

With respect to the cost evaluation, AID reports that it prepared handwritten cost comparison charts for the initial proposals and BAFOs. These charts included a breakdown of each offeror's cost estimates for salary, overhead, travel and transportation, subcontracts, general and administrative expenses, fees, and other costs.

AID awarded the contract to Healthcare Enterprise at an estimated cost-plus-fixed-fee of approximately \$17.1 million compared to approximately \$13.5 million for American Consortium. In doing so, at that time, AID officials failed to prepare a written analysis of the cost proposals, other than handwritten cost comparison charts, or a written selection statement. Nevertheless, AID explains that "[d]ue to the significant difference in . . . technical scores, the unanimous conclusion of the [Technical Evaluation] Panel that [Healthcare Enterprise] had the superior technical proposal, and the relatively low priority given to cost in this procurement, the contracting officer determined that award should be made to [Healthcare Enterprise]." AID also states that although American Consortium's proposed costs were as much as 20 percent less than the awardee's, the amount allocated by that firm for subcontracts "per consortium member per year was unrealistically low."

JSA protested on December 10, 1990 and, after a debriefing, the firm filed a second protest on December 21. JSA argues that during the debriefing, an agency official stated that the agency wanted a contractor that could bring "new blood" into the financing of healthcare and that American Consortium proposed a "reactive" instead of a "proactive" organization. According to the protester, these matters were not covered by the RFP evaluation criteria. In addition, JSA asserts that during the debriefing and in the evaluation, AID improperly criticized and downgraded American Consortium for proposing a joint venture and for proposing to use indefinite quantity contracts with its subcontractors. JSA also complains that contracting officials failed to assign a numerical weight to cost in the selection and that cost was not given sufficient weight in the award decision. Therefore, according to JSA, contracting officials failed to consider the fact that

American Consortium proposed to perform the contract for almost 20 percent less than the awardee.

In response to JSA's contention that AID used technical evaluation criteria not listed in the solicitation, the agency explains that the reference to "new blood" at the debriefing was a poor choice of words. According to AID, the head of the evaluation panel should have said that the solicitation contemplated the establishment of new networks and new relationships with United States healthcare organizations and experts in order to bring new solutions and resources to healthcare financing problems in AID cooperating countries. AID maintains that the agency's concerns in this respect should have been clear from the solicitation.

We agree with AID. First, since a debriefing is only an after-the-fact explanation of the selection decision and not the selection itself, Haworth, Inc., B-215638.2, Oct. 24, 1984, 84-2 CPD ¶ 461, we are primarily concerned with the evaluation record and not the reference to "new blood" at the debriefing. Second, while under the law, proposals are to be evaluated in accordance with the criteria set forth in the RFP, 41 U.S.C. § 253b(a) (1988), the evaluation criteria by their nature are used to measure the extent to which and how well proposals satisfy agency requirements; they are not a statement of the requirements themselves, which are set forth in other parts of the RFP.

Here, the solicitation stated that the objective of the procurement was the formation of a consortium through which AID could collectively engage the expertise and skills of the United States health industry to permit the transfer of health finance and operations technology to cooperating countries. According to the solicitation, "[t]he need for new solutions is obvious" and "[t]he role of government and its relationship with the private sector must change." The RFP also refers to "mobilization of private resources," "public-private partnerships" and "new and better mechanisms for mobilizing and using resources." According to the solicitation, the selected consortium is, among other things, to "develop creative approaches for improving the skills and understanding by AID project officers and host country health industry personnel of broader health sectoral issues and techniques and options." In our view, AID's desire for new networks, relationships and solutions that would assist in solving healthcare financing problems was clear from the solicitation as a whole, or should have been clear to any reasonable reader. Accordingly, the agency properly could measure, under the RFP evaluation criteria, the extent to which offerors proposed such an approach, and by doing so, the agency did not rely on unstated evaluation criteria.

We also do not see how a reasonable offeror could fail to understand from the solicitation that AID would prefer a consortium that actively or "proactively," seeks solutions to the health finance problems of cooperating countries over a reactive consortium. In any event, in response to this contention, AID noted that the RFP described the responsibilities of core personnel as involving "proactive efforts to identify needs and opportunities for modifying existing systems through specific assistance on policy dialogue." JSA filed comments on AID's report but did not rebut the agency's position or otherwise comment on this issue. Consequently, we consider this issue to be abandoned. Engineered Air Sys., Inc., B-236932, Jan. 19, 1990, 90-1 CPD ¶ 75.

JSA also seems to have abandoned its arguments that AID improperly downgraded American Consortium because it was a joint venture and because the firm proposed to use indefinite quantity contracts for its subcontracted work. In its reports on JSA's protests, AID explained that the evaluation panel viewed the joint venture relationship between JSA and its principal joint venturer as extremely narrow in substance and that the panel was concerned that under the proposed arrangement the role of the other principal joint venturer in defining and solving problems did not appear to be significant. With respect to the use of indefinite quantity contracts, AID reported that this method for linkage of consortium members did not appear to provide a particularly responsive and innovative approach to the needs of the project. Again, in its comments on AID's report, JSA did not rebut the agency's position. Consequently, we consider these issues also to have been abandoned. Id.<sup>1/</sup>

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<sup>1/</sup> In its final submission on the protest, for the first time, JSA argued that AID failed to hold meaningful discussions since it did not inform American Consortium that the evaluation panel was concerned with the use of indefinite quantity contracts to link consortium members. Under our Bid Protest Regulations, a protest must be filed within 10 working days of when the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Where, as here, a protester supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. Golden Triangle Management Group, Inc., B-234790, July 10, 1989, 89-2 CPD ¶ 26. AID released the technical evaluation reports to JSA on or before February 11, 1991; at that time JSA became aware that the evaluation panel had been concerned about American Consortium's use of indefinite quantity contracts. Nonetheless, JSA did not argue until more than 10 working days later, on March 6, that AID was required to

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In sum, we have carefully reviewed the agency's evaluation of the American Consortium's technical proposal and find that the agency's conclusions have a reasonable basis and that the evaluation was consistent with the stated RFP factors.

JSA also challenges the selection decision on the basis that it was improper in view of the cost difference between its proposal and that of the awardee. In doing so, JSA focuses upon the lack of documentation of both the selection decision and the cost analysis as well as on alleged improprieties in both.

In connection with the lack of documentation, JSA argues that the agency should not be permitted to justify its cost evaluation with documents prepared after-the-fact since the agency could thereby "retrofit the evaluation" to respond to the protest. JSA maintains that the record includes no contemporaneously prepared documents that support either the cost evaluation or the selection itself.

It is true that the agency failed to create an adequate contemporaneous record of either its evaluation of the cost proposals or of the cost/technical tradeoff upon which the selection was based. Nevertheless, we do not agree with JSA that the selection decision should be automatically voided because of this. See Burnside-Ott Aviation Training Center, Inc; Reflectone Training Sys. Inc., B-233113; B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158. In reviewing a cost evaluation and selection decision like the ones here, we look to the entire record, including statements and arguments made in response to a protest, so that we may determine whether they are supportable; we do not limit our review to the question of whether they were properly documented at the time they were made. Id. In this case, with respect to the cost evaluation, AID has submitted affidavits from the contracting officer and contract specialist and two cost charts which compare American Consortium's proposed costs to those proposed by Healthcare Enterprise. Further, with regard to the agency's final selection, its rationale can be gleaned from the actual proposal evaluation records and from the agency's protest report.

JSA maintains that in the selection decision AID did not give to cost the weight required by the solicitation. In this respect, JSA argues that by stating that the weight of cost factors in the selection decision was "not to be considered as

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discuss this matter. Consequently, this issue is untimely and will not be considered.

high as 50%," the solicitation indicated that the significance to be accorded to cost was to be close to 50 percent.

We agree that it would be improper for an agency to assign a relatively insignificant weight to cost in the actual evaluation in light of the RFP statement. Here, however, it is clear from the overall record that even if cost was worth 50 percent the selection decision would have been the same. The evaluation records show that AID contracting officials believed that Healthcare Enterprise's BAFO was far superior to the others submitted. The evaluators were impressed that Healthcare Enterprise's BAFO was the only one "to fit the definition of a consortium" and that it "thoroughly grasped the concept of the project and the use of organizations and subcontracts to enlarge the playing field and bring the broad range of resources into an effective relationship with the consortium." The evaluators were also impressed that the awardee's joint venturers were "clearly leaders in the industry." The contracting officer, based on the cost comparison charts prepared during the evaluation, recognized the proposed cost difference between American Consortium and the awardee, but was of the view that Healthcare Enterprise's substantial technical superiority was worth the additional cost. Accordingly, we see no basis to conclude that the award was improper because of nonadherence to the relative weights of the evaluation factors.

Next, the protester complains that the agency did not conduct any sort of rational cost analysis. In this regard, it challenges AID's conclusion that American Consortium's subcontractor costs were unrealistically low. JSA argues that the subcontractor costs were sufficient since the Consortium budgeted \$350 per day for professionals on subcontracts while the RFP recommended only \$250 per day. The protester also maintains that if this was in fact a concern to the agency it should have been raised during discussions. Finally, JSA says the cost comparison charts prepared by the agency and submitted in connection with the protest are inaccurate in several respects. For example, JSA asserts that the charts show that AID double counted overhead for salaries in American Consortium's initial proposal.

When a cost reimbursement contract is to be awarded, the offeror's estimated costs of contract performance should not be considered as controlling since the estimates may not provide valid indications of final actual costs which the government is required, within certain limits, to pay. PRC/VSE Assocs. Joint Venture, B-240160; B-240160.2; B-240160.3, Oct. 30, 1990, 90-2 CPD ¶ 348. The government evaluation is to be aimed at determining the extent to which the estimates represent what the contract should cost and since this process involves the exercise of informed judgment



by the agency, our review of it is limited to ensuring that it was done reasonably. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In this connection, there is no requirement that in every instance the agency conduct an in-depth analysis or that it verify each item. Ferguson-Williams Inc; Hawk Management Servs., B-232334; B-232334.2, Dec. 28, 1988, 88-2 CPD ¶ 630.

We have carefully reviewed the documents which contain what the agency says is its cost analysis and although, as the protester points out, it does contain some inaccuracies and in fact appears to be a bit confused in certain respects, for the reasons cited below, we do not believe that we have a legal basis upon which to object to it.

As far as the subcontract costs are concerned, regardless of the daily rate which American Consortium proposed to pay its individual professionals on subcontracts, AID determined that the total cost for subcontractors included in that firm's BAFO was not sufficient when allocated over each consortium member for the subcontracts which each would perform per year of the contract. The record indicates that American Consortium in fact proposed significantly less than the awardee for subcontracts in its BAFO. We have no basis to challenge AID's judgment that the amount proposed by American Consortium for subcontracts was too low.

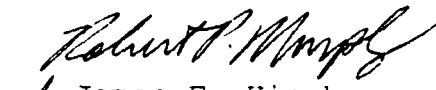
We also reject the protester's contention that AID was required to discuss its concern that American Consortium's BAFO did not include sufficient subcontractor costs. JSA states that its proposed costs for subcontracts were set out in its initial subcontracting plan and its initial cost proposal included subcontractor costs under the line item for consultants, rather than under a separate line item. During negotiations, AID asked American Consortium where subcontractor costs were located in its proposal. Thus, until they received the BAFOs, AID officials did not know the level of subcontractor costs which American Consortium included in its proposal. An agency is not required to reopen discussions to allow an offeror a further opportunity to revise its proposal when a deficiency first becomes apparent in its BAFO. Addsco Indus., Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317.

As the protester points out, some of the cost figures included by AID in the cost comparison charts may have been in error; nonetheless, JSA does not argue that the charts prepared by AID misstate the American Consortium's total proposed cost or the cost it proposed for subcontracts in its BAFO. Thus, any alleged errors in AID's comparison of costs do not undermine the agency's conclusion that American Consortium proposed an unrealistically low cost for subcontracts. Under the circumstances, we do not see how JSA was harmed by the alleged

errors, which, in any event, appear minor in relation to the total cost.2/

More important, as pointed out above, the actual selection was based upon the agency's view that the Healthcare Enterprise proposal was significantly superior technically which it was entitled to do under this solicitation. See Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364. It is clear from this record that correction of the errors JSA complains of would not have changed the result.

The protest is denied in part and dismissed in part.

  
for James F. Hinchman  
General Counsel

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2/ Although JSA argues that AID failed to analyze "the relationship of the level of overhead or indirect costs to direct program costs," as required by the RFP, the cost comparison charts prepared by AID during the evaluation compared each offeror's proposed costs for salaries, overhead, travel and transportation, subcontracts, fees and other items for initial proposals and BAFOs. Based on this breakdown, the relationship of overhead or indirect costs to direct program costs for each offeror was clear. No more of an analysis was required by the RFP.